Bail Slip

The Appellant/ Accused Viz., Manoharan was directed to be released on bail in and by the order of this Court dated 21.11.2002 in Crl.M.P. No.11336/02 in Crl.A.No.884 of 2002.

In the High Court of Judicature at Madras

Dated: 20.04.2006

Coram

The Honourable Mr.Justice M.KARPAGAVINAYAGAM

and

The Honourable Mr.Justice S.R.SINGHARAVELU

Criminal Appeal No.884 of 2002

Manoharan ..Appellant/ Accused

..vs..

State by
Inspector of Police,
Villupuram Taluk Police Station,
Villupuram. ..Respondent/ Complainant
Crime No.659/2000.

Criminal Appeal under Section 374(2) of Criminal Procedure Code filed against the judgment dated 29.04.2002 in S.C.No.82 of 2001 on the file of Additional Sessions Judge, Villupuram Division, Villupuram.

For Appellant : Mr.R.Shanmuga Sundaram,
Senior Counsel for
Mr.K.S.Ramachandran
assisted by Mr.L.Baskaran

For Respondent : Mr.E.Raja,
Additional Public Prosecutor.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

JUDGMENT

(Judgment of the Court was delivered by M.KARPAGAVINAYAGAM,J.,)

Manoharan, the appellant, was convicted for the offence under Section 302 I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs.3,000/-, in default to undergo three months simple imprisonment. Challenging the same, this appeal has been filed.

2. The facts leading to the conviction are as follows:-

"(a) Manoharan, the accused married the deceased Kasthuri 11 years back. Out of their wedlock, three children were born. The accused is working as Assistant in the Office of Sub Registrar at Chinna Salem. Both the accused and deceased along with their children were living at Ulundurpet. There were frequent quarrels between the deceased and the accused.

(b) On 11.07.2000 morning, as usual, the accused left his house and went to Chinna Salem to attend his office work. On the same day at about 1.30 PM., the deceased left Ulundurpet and got into the bus for Villupuram, where the parents reside, to purchase sarees for her brother's marriage. At that point of time, the accused, who was working in the Sub Registrar Office at Chinna Salem, left the office and came to Villupuram and took the deceased in a motor cycle and went to Pidagam Village, which is 6 kms.away from Villupuram. There, he committed murder by attacking her with a wooden log. Then, he went back to his office to attend the work.

(c) When the Village Assistant found the dead body in the place, he reported the matter to P.W.1, the Village Administrative Officer. The Village Administrative Officer came to the scene and noticed the dead body of the deceased and was able to find out the identity of the deceased from the articles contained in a hand bag, which was found near the dead body, and gave a report to the Inspector of Police, P.W.32.

(d) P.W.32 originally registered the case on 'suspicious death' under Section 174 of Criminal Procedure Code. He came on the same day, i.e. on 11.07.2000 at about 4.30 PM and conducted the inquest.

(e) P.W.15 Dr.Sumathi conducted post mortem and gave an opinion about the death under Ex.P-14 post-moretem certificate.

(f) On the basis of the post-mortem certificate to the effect that the death was due to the head injury, the offence was altered into one under Section 302 IPC on 18.07.2000. On the very same day, the accused was arrested.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(g) P.W.32 examined P.W.24 Sekar and P.W.25 Babu, who stated that the accused was last seen in the company of the deceased on 11.07.2000 near the place of occurrence. On 24.07.2000, P.W.32 gave a requisition to record statement under Section 164 of Cr.P.C.from P.Ws.24 and 25. Accordingly, statements under Section 164 of Cr.P.C.were recorded on 27.07.2000. P.W.32 obtained police custody of the accused on 31.07.2000.

(h) In the meantime, P.W.32 requested for conducting identification parade. Accordingly, on 31.07.2000, P.W.29, the Judicial Magistrate conducted the identification parade, in which P.W.24 alone identified the accused.

(i) P.W.32 examined other witnesses and recovered the letters Exs.P-7 to P-10 written by the deceased to her parents regarding the torture meted out at the hands of the accused. An opinion was obtained from the Handwriting Expert on the basis of the Diary M.O.7 seized from the house of the deceased.

(j) After completion of the investigation, the charge sheet was filed against the accused under Section 302 I.P.C.

(k) During the course of trial, on the side of prosecution, P.Ws.1 to 33 were examined; Exs.P-1 to P-37 were filed and M.Os.1 to 12 were marked.

(l) The accused denied having participated in the occurrence, while he was questioned under Section 313 of Cr.P.C. According to him, he was in the office from 10.00 AM to 5.30 PM at Chinna Salem. On his side, Exs.D-1 to D-19 were marked and one witness was examined. D.W.1, the Junior Assistant, Sub Registrar's Office was examined to show that the accused was in the office throughout.

(m) The trial Court relied upon the evidence adduced by the prosecution and convicted the accused for the offence under Section 302 IPC and sentenced him as aforesaid. Aggrieved by the said conviction and sentence, the accused has filed this appeal".

3. We have heard Mr.R.Shanmuga Sundaram, learned Senior Counsel for the appellant as well as the learned Additional Public Prosecutor. We have also gone through the entire records.

4. According to the prosecution, the accused / husband took the deceased to the scene place on 11.07.2000 at 2.00 PM and attacked her by inflicting injury on the head and caused her death. The prosecution proposed to place materials to show that even though the accused attended the office on 11.07.2000 at Chinna Salem, at 1.00 PM he left the office and came to Villupuram and took the deceased to a secluded place, where the accused attacked her causing the death.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. Admittedly, there is no eye witness. The entire case rests upon the circumstantial evidence. There are two sets of evidence, which have been placed by the prosecution to connect the accused with the crime in question. The first set of evidence is relating to the letters written by the deceased to her parents Exs.P-7 to P-10 and the evidence of P.W.4 Prabhu, brother, P.W.6 Jayaraman, father, P.W.8 Ananthi, sister, P.W.9 Poongothai, another sister and P.W.10 Ponnusamy, the father-in-law of P.W.9 to speak about the torture meted out to the deceased at the hands of the accused. The second set of evidence is relating to the last seen of the accused in the company of the deceased spoken to by P.Ws.24 and 25.

6. There is no difficulty in coming to the conclusion that the fact that the deceased was tortured to the core at the hands of the accused has been sufficiently established by the letters as well as through the oral evidence of father, brother and sisters. The Handwriting Expert's opinion also would clearly reveal that those letters were written by the deceased to her relatives. Though some suggestions were put that those letters were not written by the deceased, there is no serious challenge to those letters as nothing was produced on behalf of the defence that the handwriting in those letters is not that of the deceased. Therefore, in our view, the first circumstance would clearly reveal that the deceased was tortured continuously by the accused.

7. However, the above circumstance alone would not be sufficient to connect the accused with the crime. Therefore, let us see the second circumstance, namely, the evidence of P.Ws.24 and 25, who saw the accused in the company of the deceased at or about the time of occurrence near the scene place.

8. According to the prosecution, the occurrence took place on 11.07.2000 at 2.00 PM. P.W.2 Sekar would state that the deceased was found lying in the scene near the road side where Pidagam road begins, with the injury on the head. Then, P.W.2 Sekar poured water into her mouth. Within a few minutes, she died. The case was originally registered under Section 174 of Cr.P.C., on the complaint of Village Administrative Officer, P.W.1 to P.W.32, Inspector of Police. But, P.W.32 did not take any steps to arrange for inquest to be conducted by the Executive Magistrate as contemplated under Section 174 of Cr.P.C. However, the inquest was conducted by P.W.32 himself and some of the witnesses except P.W.2 were examined. So, the evidence of these witnesses would indicate that somebody must have caused injuries on the deceased and before she died, that person left the place.

9. It is the case of the prosecution, as indicated above, that P.Ws.24 and 25, the father and son had seen that the accused was in conversation with the deceased in the scene place. P.W.32,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

on getting the post-mortem report stating that the deceased died of head injury, altered the offence into one under Section 302 IPC. Immediately, the accused was arrested and sent for remand. Even though there is an evidence collected later through P.Ws.24 and 25 with reference to the last seen, admittedly, there is no material whatsoever as against the accused that he only committed the murder of the deceased. However, P.W.32 thought it fit to fix the accused as a culprit and sent him for judicial remand. Only on 23.07.2000, both P.Ws.24 and 25 were examined. Admittedly, P.Ws.24 and 25 did not give any explanation as to why they have not given any such statement with reference to the last seen either to the police or to the villagers.

10. As a matter of fact, the inquest was conducted by the Inspector of Police in the presence of officials and the villagers on 11.07.2000 itself at 4.30 PM. P.Ws.24 and 25 were examined only on 23.07.2000. There is no material to indicate as to what made these witnesses to come and give a belated statement, that too after 12 days. Similarly, there is no material to indicate as to how P.W.32 had traced out these witnesses to collect the evidence relating to the last seen alive theory.

11. It is true that P.Ws.24 and 25 have given statement under Section 164 of Cr.P.C. before the Judicial Magistrate on 27.07.2000. It is also true that P.W.24 alone identified the accused in the identification parade conducted on 31.07.2000. Admittedly, when the accused was questioned by the Judicial Magistrate after the identification parade was over, the accused complained to the Judicial Magistrate that he was shown to the witnesses before the parade and as a matter of fact, both were going in a Police Van. Therefore, mere identifying the person in the parade, in the absence of any acceptable evidence from these witnesses, viz., P.Ws.24 and 25 with reference to the last seen theory cannot give out a formidable material to connect the accused with the crime in question.

12. We have gone through the evidence of P.Ws.24 and 25 in entirety. As indicated above, P.W.24 was able to identify the accused in the parade, but P.W.25 could not and P.W.25 has given the reason as to why he was not able to identify because at that time, the accused was lying on the ground when he saw the accused. As a matter of fact, P.Ws.24 and 25 would state that after immediately coming to know that the dead body was in the scene place, they came and saw the dead body along with other villagers. That being so, there is no reason as to why they had not given information about their having seen the accused lastly in the company of the deceased to any other person to the police at the time of inquest. Further, the evidence of P.W.18, the Officer in Sub-Registrar Office would clearly indicate that P.W.32 had

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

obtained a certificate from P.W.18 that the accused was there in the Sub Registrar office throughout from 10.00 AM to 5.00 PM. This was not marked by the prosecution. On the other hand all the connected documents Exs.D-1 to D-19 were marked and D.W.1 was examined to prove the defence.

13. It is the case of the prosecution through P.W.7, the daughter of the deceased that she phoned up three times and talked to the accused when he was in the office. It is not the case of the daughter that the accused was not available at that time. As a matter of fact, the accused tried to find out the whereabouts of the wife by phoning up to P.W.6, the father of the deceased, P.W.4, the brother of the deceased and also P.Ws.8 and 9, the sisters of the deceased. This has been admitted by these witnesses that the accused phoned up and enquired about the wife. As mentioned above, the accused was available throughout even during the course of inquest.

14. In the light of the above factual aspects, we are not able to place reliance upon the evidence of P.Ws.24 and 25 and consequently, we are constrained to hold that the prosecution has failed to prove its case as against the accused beyond reasonable doubt.

15. Therefore, the conviction and sentence imposed under Section 302 of I.P.C. on the appellant / accused are set aside and the appeal is allowed. Fine amount, if paid, shall be refunded to the appellant. The bail bond executed by the appellant shall stand cancelled.

20.04.2006

For Being Mentioned

This Criminal Appeal having been posted on this day ie. on 28.4.2006 for being mentioned in pursuant to the order of this Court dated 20.04.2006 and made herein in the presence of the aforesaid Advocates, the Court made the following order:-

(Order of the Court was made by M.KARPAGAVINAYAGAM,J.)

WEB COPY

This matter is posted today 'for being mentioned', in order to effect some compromise between the parties, namely, the appellant/accused and the prosecution witnesses, as they are close relatives.

2. Today, Manoharan, the accused, who has been acquitted by this Court, has filed an affidavit, stating the following :

https://hcservices.ecourts.gov.in/hcservices/

"1) I submit that this Hon'ble Court in the above appeal had acquitted me against the order of conviction passed by the trial Court for committing the murder of my wife. I submit that I have three children, two daughters namely Ms.Mahalakshmi, Ms.Gayathri and one son Master Jeyaganesh. After the death of my wife, they were taken care of by my in-laws. Now also, they are being taken care of by my in-laws.

2) I submit that I have utmost interest, care and concern for the welfare of my children. I am very much interested in their secure future and I will do my best to ensure their secure future.

3) I submit that there are four properties in the name of my deceased wife Kasthuri and I am willing to relinquish my rights over those properties in favour of my three children. I also submit that I will deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs) in the name of my three children within a reasonable period of time.

4) I submit that I will relinquish my rights and execute a release deed in respect of the four properties standing in the name of my deceased wife Kasthuri within a period of one month. I humbly request this Hon'ble Court to fix a reasonable period of time for the deposit of Rs.5,00,000/- (Rupees Five Lakhs) in the name of my three children."

3. J.Anandhi, P.W.8, who is taking care of the three children of the accused and the deceased, has also filed an affidavit, agreeing for the said compromise. The affidavit reads as follows :

"1. I respectfully submit that I am the elder sister of the deceased Kasthuri in the above mentioned appeal and as such I am filing this affidavit before this Honourable Court.

2. I further respectfully submit that after the sudden demise of my sister deceased Kasthuri, I am looking after her children viz., 1.M.Mahalakshmi, aged about 16 years,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2.M.Gayathri, aged about 12 years, and 3. M.Jaya Ganesh, aged about 11 years, as Guardian so far, with due care and attention. I further submit that when the first child M.Mahalakshmi met with an accident in the year 2003, I have paid all the medical expenses and replacement of artificial leg fixed to her for the perusal of this Honourable Court.

3. I further respectfully submit that while disposing the above mentioned appeal, the petitioner herein agreed to pay before this Honourable Court a sum of Rs.5,00,000/- (Rupees Five Lakhs only) and further agreed to transfer certain properties in the name of three children for which I stood as Guardian for the welfare of the children.

4. I further respectfully submit that I hereby undertake to utilize the above mentioned amount of Rs.5,00,000/- (Rupees Five Lakhs only) and certain properties mentioned in the affidavit filed by the petitioner before this Honourable Court, for the welfare of all the three children in future as Guardian.

5. In such circumstances, I humbly pray that this Honourable Court may be pleased to accept my affidavit and pass appropriate orders as this Honourable Court may deem fit and proper in the facts and circumstances of the case and thus render justice."

4. Parties are present.

5. We have heard the learned counsel for the appellant/accused and also the learned Additional Public Prosecutor.

6. Taking into consideration the future of the children, who are under the care and custody of Anandhi, who is examined as P.W.8, we feel, it would be better to record the undertaking, given by the appellant/accused as well as Anandhi, P.W.8. Accordingly, it is recorded.

7. As per the undertaking, Manoharan, appellant, is directed to deposit a sum of Rs.5.00 lakhs (Rupees Five Lakhs only) and also to execute the release deeds, in respect of the properties mentioned in the affidavit, in favour of the children.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8. Out of Rs.5.00 lakhs, a sum of Rs.2.50 lakhs shall be deposited by the appellant in the name of Anandhi, who is representing the children, within a period of three months from today, and the balance of Rs.2.50 Lakhs shall be deposited within a period of three months thereafter.

9. Post the matter for reporting compliance on 10.10.2006.

10. It is reported that the trial Court ordered for return of the jewels to P.W.6, who is the father of the deceased and he is no more now.

11. Therefore, Anandhi, who has become the caretaker of the children, is entitled to file an application before the trial Court, and get back the jewels in Property Nos.661 of 2000 and 515 of 2001 and also the cash of Rs.5,013/-.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dixit

To

1) The Additional Sessions Judge,
   Villupuram Division,
   Villupuram.

2) The Principal Sessions Judge,
   Villupuram.

3) The Judicial Magistrate No.I,
   Villupuram.

4) The Chief Judicial Magistrate,
   Villupuram.

5) The Inspector of Police,
   Villupuram Taluk Police Station,
   Villupuram.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6) The Superintendent,
Central Prison,
Cuddalore. (in duplicate for Communication to the Accused)

7) The District Collector,
Villupuram.

8) The Director General of Police,
Mylapore,
Chennai-600 004.

9) The Public Prosecutor,
High Court,Madras.

10. The Section Officer, Criminal Section,
High Court, Madras.

11. The Section Officer,
Accounts Section,
High Court, Madras 104.
(With regard to deposit of money)

4 ccs to Mr.K.S.Ramachandran, Advocate, Sr. Nos. 20579 & 22686

Crl.Appeal No.884 of 2002
20.04.2006/ 28.4.2006

MAB (CO)
kk 17/6

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/